



**In re Baby D (Child) (Adoption Cause E004 of 2024)  
[2024] KEHC 16258 (KLR) (18 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16258 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
ADOPTION CAUSE E004 OF 2024  
MW MUIGAI, J  
DECEMBER 18, 2024  
IN THE MATTER OF CHILDREN ACT 2022  
AND  
IN THE MATTER OF BABY D (CHILD)**

**IN THE MATTER OF**

**HMM ..... 1<sup>ST</sup> APPLICANT  
ENM ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The Applicants herein, HHMM – ID. Number 985xxxx and ENM – ID Number 2125xxx (“the Applicants”) sought by their application to be allowed by this Court to adopt baby D (hereafter “the child”).
2. Vide Originating Summons application dated 1<sup>st</sup> March, 2024 the Applicants sought among other orders that; the Applicants herein HHMM and ENM be authorized to adopt baby D ; the consent of the biological parents be dispensed with as the child was abandoned; upon making of the adoption order the said child be known as DMM ; the Registrar General to make the appropriate entry of DMM in the Adopted Children’s Register; the child be presumed to be a Kenyan citizen born in Kenya and be issued with a Kenyan passport and HMN – ID Number 262xxxx be appointed as the Legal Guardian of the child upon the granting of the Adoption Order.
3. The Applicants sought further orders that VON – ID Number 989xxxx be appointed to act as Guardian ad litem in respect of the adoption of baby D and that the Secretary of Children Services do prepare a Home Study Report for submission to this Court. VON was appointed as the Guardian Ad Litem on 25/09/2024.
4. The child herein (baby D ) the subject of the present adoption proceedings was presumably born on 10<sup>th</sup> November, 2017 in Nairobi. The child was reported abandoned on 10/02/2018 in



Langata Sub-County. He was rescued by a Good Samaritan by the name Vivian Atieno of phone No.070259xxxx who reported the matter at Lang'ata Police Station *vide* No.54/10/02/2018. The child was approximately to be three months old at the time of abandonment as per the initial police letter. The officers at Langata police station conducted their investigations into the matter. As per the police letter dated 31/07/2019 their investigation to trace the child's birth family/efforts to trace the biological parents did not bear any fruits and so far no one has ever come forth to claim the child.

5. The Child Welfare Society of Kenya (CWSK) engaged in both social investigations and media tracing with the aim of finding the child's family by use of print media whereby there made a publication in Standard Newspaper of 29/07/2018, the Standard of 30/09/2018 and the Standard of 28/10/2018 – (copies of attached). The aim of the media tracing publication aimed at publishing the details of the child so as to find out from the public or the community whether anyone knew the child's family but the minor remained unclaimed. The Child Welfare Society of Kenya also tried to contact Vivian Otieno the good Samaritan who found the child abandoned but her cell phone No.070259xxxx was unreachable. The Area Chief of Mugumoini sub-location where the child was abandoned confirmed that no one has come to report or claim baby D (as per chief's letter dated 11/06/2021).
6. The child was committed at Child Welfare Society of Kenya (CWSK) Mama Ngina Kenyatta Temporary place of safety for continued care and protection *vide* C&P Case No.678 of 2018 in Milimani Children's Court in Nairobi on 19/12/2018 as per the copies of the committal order attached). The child stayed at CWSK Mama Ngina Kenyatta temporary place of safety until he was placed with the Applicants on foster care pending adoption on 02/07/2021 as per attached form of agreement of foster care. The minor was thus freed by the Child Welfare Society of Kenya declared free for Adoption on 11/06/2021 *vide* Certificate Declaring Child Free for Adoption Serial No.1056.
7. The Langata Police Station in their final police letter dated 31/07/2019 confirmed that no one came forward to claim the child and their efforts to trace the kindred of the child have been futile.
8. The following documents were availed from Child Welfare Society of Kenya for baby D .
  1. Initial Police Letter from Langata Police Station dated 12/02/2018
  2. Child rescue form
  3. Committal Order dated 19/12/2018
  4. Final police letter from Langata Police Station dated 31/07/2019
  5. The letter from the Chief Mugumoini location – Langata sub-county
  6. Standard newspaper publication
9. The Applicants herein HMM and ENM are residents of (Particulars withheld) area within Machakos County. The Applicants annexed the following documents in support of their application;
  1. Applicants copies of Identification card
  2. Certificate of Marriage serial no. 171xxxx
  3. The 4 Biological children Consent
  4. Police clearance form for the both Applicants
  5. Affidavit of the Legal Guardian
  6. Consent of the guardian ad litem



7. Photos of both Applicants
8. Medical Reports for the Applicants
9. Copy of Identification card of the Legal Guardian
10. Pursuant to the *Children Act*, Kenya Children's Home Adoption Society, the relevant Adoption Society, prepared and filed in Court a favorable Report of 1/03/2024 in respect of the proposed adoption of the child by the Applicants.
11. The Guardian Ad Litem, VON also filed the Statutory Report dated 6/05/2024 in which he noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.
12. The Child Welfare Society of Kenya filed their comprehensive Report dated 27/06/2023 in Court on 1/03/2024. According to the Report the Applicants made a joint adoption application to Child Welfare Society of Kenya. An Interview session and home assessment were carried out on 06/07/2022. The Report contains social and economic background. The Applicants are a couple they were married in 1991 through a customary wedding and solemnized their union at the Registrar's office in Nairobi on 22/09/2010 vide Certificate of marriage serial No.171xxxx. The Applicants are blessed with four biological children namely; (1) ENM - born in 1994 (currently working), (2) LKM – born in 1998 (running a business in Nairobi) (3) FM born in 2008 (first year student at Mount Kenya University) and (4) MM born in 2008 (in form one at (Particulars withheld) Girls). The children are aware of the intended adoption and have consented to the adoption. The Applicants motivation for adoption is their earning to have a male child for purposes of continuity, assist a child by mentoring him and give a child home and identify. The male Applicant works is a Civil servant working as a Senior Records Manager with the (Particulars withheld) earning a monthly salary income of Kshs.135,000/- (Payslip attached) while the female Applicant earns a monthly income of Kshs.10,000/- from her business and farming. The Applicants are confirmed to be of good general health as per health medical reports attached. The Applicants own three acres of ancestral land at (Particulars withheld) where they have built their own residential home and practice farming. They own a four bedroomed permanent house. They also own two plots of land (50x100) where they have developed rental units. The Applicants are law abiding citizens and do not have any criminal record. The Applicants are Christians worshipping at Trust Ministry (TMC) where they are pastors. The Applicants' extended families are very supportive of the adoption and have embraced the minor as a member of their family.
13. Mr. Francis Ndeleko from the Child Welfare Society of Kenya appeared in Court on 15/05/2024. He told the Court that the instant case was of abandoned child at Langata Sub-County. The Original certificate to Free child Serial No. 1056 for adoption was filed together with the Report. The child was placed at Mama Ngina Kenyatta Temporary place for safety custody and committed through the Milimani Children Courts to the said Home. The Applicants were interviewed on 6/07/2022 and the Committee assessed the couple and were found suitable to adopt the child. The Applicants have social and financial means to adopt the child and they are in good health. The Society recommended the adoption.
14. The Director of Children's Services filed their report dated 1/07/2024 in respect of the proposed adoption of the child by the Applicants. The Report indicated that the Applicants are a couple married in the year 1990 and solemnized their union on 22/09/2010 vide Certificate of Marriage Serial No.171xxxx. A home visit was conducted on 28/06/2024 where it was observed that the Applicants live in their own 4 bedroomed house fixed with electricity and piped water. They practice farming and also own a saloon car. The bonding process has taken place successfully and their biological children have given their consent. The Applicants are financially stable, no criminal records and it is for the



- minor's best interest since the child will grow up in a family and have a sense of belonging. The Director of Children's Services recommended the adoption for the well-being of the child.
15. Ms Emily Kimanzi the Director of Children services appeared in Court on 22/10/2024 and told the Court that the Applicants have four (4) biological children/daughters. Two of the daughters are married and two are in school. The Applicants are emotionally, financially and socially capable. The older children have filed consents to the adoption. She recommended the adoption.
  16. The Guardian Ad Litem, VON – ID Number 989xxxx filed his Report dated 6/05/2024 in support of these Adoption proceedings. He appeared in Court on 23/10/2024 and stated that the Applicants are capable of taking care of the child. He had visited their home in Kyangala area within Machakos County where the Applicants live. He observed that the minor has bonded well with the family. The child in school has been enrolled at ##### School.
  17. Similarly, in the Guardian Ad Litem Report he stated that he had known the Applicants since the year 2013. During his visit at the Applicants home, he found that the Applicants have built a good spacious home within Kyangala in Machakos County fitted with the common basic amenities ie. Water and electricity. The minor herein has settled well with the Applicants as well as the wider family. The minor has learnt to express affection and easily relates with other members of the family and that the adoption is of the best interests of the child. The Guardian Ad litem recommended the adoption.
  18. The Legal Guardian HMN of Identification Card Numbers 26###2 a sister to the male Applicant filed Affidavit sworn on 14<sup>th</sup> March 2024. She stated that she is aware that her role entails to exercise parental responsibility over the child herein in the event of the Applicant's death or inability or incapacity for any reasons that would cause them to be unable to fulfill their roles as a parent to the child.
  19. The Applicants biological children (1) ENM – ID No. 3155xxxx (2) LKM– ID No3567xxx, (3) FMM ID No. 4023xxxx and MMMM filed their consent sworn on 7/11/2023 to the adoption of the minor herein stating that; they are the biological children of the Applicants, they acknowledge DMM as their brother and will provide him with all the positive companionship, comfort, protection and support needed to help him realize his full potential; the minor baby D has all the inheritance rights like any other family member.
  20. All the Statutory Reports filed in respect of the proposed adoption of the child by the Applicant recommended that this Court allows the adoption of the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicant fulfilled all the legal requirements in relation to the adoption of the child.
  21. The home visits by the Guardian ad litem, the Adoption Society Representative and the Director of the Children's Services established that the Applicant is financially and socially stable and has emotional capability to provide for the upkeep and education of the child and give parental care.
  22. This Court observed the Applicant with the child in Court and it was evident that in the period that the Applicant have had the custody of the child, the child has bonded well. The child considers the Applicant to be his mother.

## **Disposition**

1. On the basis of a careful examination of the documents presented before this Court as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application.
2. The Applicants, HMM and ENM are hereby allowed to adopt baby D .



3. Henceforth, the child shall be known as DMM
4. The child's date of birth is 10<sup>th</sup> November, 2017 and the place of birth shall be NAIROBI COUNTY.
5. The child is a Kenyan Citizen by birth and entitled to all rights of a Kenyan citizen.
6. HMN shall be the Legal Guardian of the child should such eventuality arise.
7. This Court directs the Registrar General to duly enter this order in the Adoption Register.
8. That the Directorate of Children Services to carry out supervision on the said adoption and file a report on the ongoing safety/security of the child within one year of the Adoption in the best interests of the child under Section 8 of Children's Act 2022.
9. The Guardian ad litem is hereby discharged.

It is so ordered.

**JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS THIS 18<sup>TH</sup> DAY OF DECEMBER, 2024 (PHYSICAL/VIRTUAL CONFERENCE).**

**M. W. MUIGAI**

**JUDGE**

